IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2007

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

W.P.No.8165 of 1999

1.K.Janardhana Singh
2.Tharakeswari ... Petitioners

-Vs-

1. The Special Tahsildar
Harijan Welfare scheme,
Kallakurichi,
Villupuram District.

2. State of Tamil Nadu
represented by the Collector,
Villupuram District. ... Respondents

Writ Petition is filed under Article 226 of The Constitution of India, praying for the issue of a Writ of certiorarified mandamus calling for the records relating to the Notification No.M2/1668/98 issued by the second respondent, published in the Villupuram District Gazette Extraordinary dated 12.03.1999 in so far as it relates to the petitioners and quash the same.

For Petitioners : Mr.T.Viswanatha Rao
For Respondents : Mr.A.Edwin Prabhakar,
Government Advocate.

O R D E R

The petitioners, who claim to be small farmers, challenge the 4(1) Notification issued under Act 31 of 1978, inter alia on the ground that the report of the Tahsildar, pursuant to objections filed by the petitioners was not furnished to them and the Collector, while passing the order rejecting their claim, did not have the benefit of the objections of the petitioners to the report filed by the Tahsildar. Therefore, there is arbitrariness in the acquisition proceedings, besides non-application of mind to relevant materials.

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2. The petitioners claim to be small farmers owning an extent of 1 acre and 67 cents of cultivable land in Kattuvananjur village, Sankarapuram Taluk, Villupuram District in S.No.257/9 to 15. They are cultivating the land throughout the year by well irrigation using electric motor. Petitioners have laid a concealed cement pipe line for irrigation which will not be of any use, if the land is acquired. The well and electric motor will also go waste. Petitioners received Form No.1 notice dated 1.2.1998 from the Special Tahsildar, the first respondent herein, stating that the land of the petitioners is to be acquired for the purpose of Harijan Welfare Scheme by invoking the provisions of Act 31 of 1978. The acquisition was for the purpose of providing house sites to Adi Dravidars. Representation through the counsel dated 12.2.1998 was submitted to the authorities pointing out the infirmity in the acquisition proceedings while stating that there are enough vacant sites and waste lands belong to Government around the existing Adi Dravidar colony and therefore, there was no need to acquire the small extent of agriculture land belonging to the petitioners, which is cultivated throughout the year. They pleaded that the land is the only source of income. Petitioners submit that as per the notice, enquiry was to be conducted on 17.2.1998. However, no such enquiry was conducted. Thereafter, the Notification under Section 4(1) of the Land Acquisition Act was issued and gazetted on 12.3.1999.

3. The contention of the petitioners is that they have taken a specific stand before the first respondent officer, who issued the show-cause notice that the petitioners own small extent of fertile agricultural land which is cultivated throughout the year and that there was no other land for them except the land sought to be acquired. The land is in low lying area subject to water logging, not conducive for housing. There is enough land in higher level which can be used for housing. It was further stated in the affidavit filed in this writ petition that vast extent of waste lands are available in R.S.No.210/3 adjoining the colony which can be used. Petitioners also took a specific stand that the first respondent officer issued show-cause notice under Section 4(2)(b) of the Act and the petitioners filed detailed objections. Based on the objections, a report should have been sent by the first respondent to the District Collector before the acquisition proceedings. The petitioners contend that the copy of the report was not furnished to the petitioners. The various objections raised in the petitioners representation to the first respondent were not at all enquired into and considered before submitting the report to the Collector and therefore, the proceedings are arbitrary and without application of mind.

4. The District Collector has not recorded his satisfaction under Section 4(1) of the Act. On the contrary, satisfaction is shown as that of the Government of Tamil Nadu and implemented by the Collector. Therefore, it cannot be said to be the satisfaction of the District Collector, the competent authority under the Act.

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5. Prejudice has been pleaded in grounds "(d), (e) and (h)", in support of the objections filed earlier. It is stated that since the cultivable land is acquired petitioners' livelihood is affected, besides causing huge loss for the agriculture related infrastructure developed by the petitioners, namely, irrigation facilities as stated earlier.

6. The counter-affidavit filed by the Special Tahsildar only states that furnishing of copies of all correspondence is not contemplated. The further contention is that the family of the petitioners own 0.71.5 Hectares of wet lands and some dry lands and two terraced houses in Sankarapuram. Since compensation is paid as per the market value, the petitioners will not be put to any loss. Respondents contend that there is no Government land or poromboke lands available and therefore they resorted to acquire private lands and the lands adjacent are not fit for the above said purpose.

7. Learned counsel for the petitioners relied upon the Full Bench decision in the case of R.Pari – Vs - The Special Tahsildar, Adi-Dravidar Welfare, Devakkotai and another reported in 2006 (4) CTC 609 wherein in paragraph 43 it has been held as follows:

> " In view of the aforesaid discussion, our conclusions are as follows:
>
> The owner should be furnished with a copy of the report/recommendation of the authorised officer. Thereafter he should be given two weeks' time to make further representation, if any, before the District Collector. It is not necessary for the District Collector to give a further personal hearing or make any further enquiry. However, mere non-furnishing of the report would not have the ipso facto effect of vitiating the proceedings and the question of prejudice to the land owner is required to be considered in each case depending upon the facts and circumstances. The District Collector is expected to reflect the reasons, but merely because the communication to the land owner does not contain the reasons, the decision of the Collector is not ipso facto vitiated and it would always open to the concerned authority to prove before the Court, if such action of the Collector is challenged, that there has been application of mind and the reasons are available in the relevant records relating to such acquisition. The necessity to record the reasons is applicable where the Collector himself makes the enquiry and also where the Collector takes an appropriate decision on the basis of the report/recommendation made by the authorised officer."

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8. The main contention of the petitioners is that the report of the Tahsildar, who enquired into the matter and considered the objections of the petitioners, was not furnished to the petitioner and so the proceedings are vitiated as held by the Full Bench of this Court in its decision cited above. The only question that is to be considered is the prejudice caused to the petitioners by non-furnishing of the report of the Special Tahsildar, the first respondent. It is stated that if the report of the Special Tahsildar has been furnished to the petitioners, petitioners would have submitted their objections to the District Collector. Non-furnishing of the report of the Special Tahsildar affected the rights of the petitioners. In the instant case, as has been extracted above, the petitioners have pleaded specifically that they are small farmers and the land is cultivated all through the year. The land is low lying and water logged and fit only for year long cultivation. It is not suitable for housing purpose and there is a vast extent of land in R.S.No.210/3 in higher level which can be used for housing. All this has not been refuted. There is no report filed or shown before this Court the basis on which the Collector decided the issue. Counter-affidavit only says that the family of the petitioners is having 0.71.5 Hectares of land. The claim of the petitioners cannot be clubbed with the property of other members of the family. No where in the notice or in the Notification, it has been stated that the land in question is jointly owned by several members of the petitioners family. The petitioners alone are shown as owners. Therefore, it cannot be said that it is a joint family property. There is, therefore, totally non-application of mind with regard to the property owned by the petitioners and the objections filed by the petitioners.

9. The specific averment of the first respondent is that there is no requirement to furnish copy of the report of the Special Tahsildar, the first respondent. The Full Bench of this Court has clearly held that the owner should be furnished with a copy of the report or recommendation of the authorised officer and the land owner should be given two weeks' time to make further representation to the District Collector. In this case, admittedly, the enquiry was conducted by the Special Tahsildar, the first respondent and a copy of the report has not been furnished to the petitioners. Prejudice as pleaded by the petitioners and extracted above is evident for the reasons already stated above. It was submitted that if the report of the first respondent was furnished to the petitioners, the petitioners could have submitted their objections to the District Collector and considered by him on merits. The Collector is the authority to decide the objections of the petitioners with regard to the acquisition of the lands. The Collector has not filed counter-affidavit, but only the Tahsildar has filed the counter-affidavit. It is clear that the objections were overruled by the Special Tahsildar and not by the Collector, the competent authority. The decision of the Collector is based on the report of the Tahsildar and the objections of the petitioners were not considered. Therefore, the District Collector could not have come to a conclusion one way or other with regard to the rival claims.

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10. It is not in dispute that the report of the Tahsildar was not furnished to the petitioners. As to the question of prejudice to the land owners, learned counsel for the petitioners submitted that the Collector passed order based on the report of the Tahsildar which is contrary to the claim of the petitioners as is evident from the reasons given by the Tahsildar in his counter-affidavit. For the first time, some reasons are set out in the counter-affidavit, which relate to the lands held by the family. The same could have been given to the petitioners by the authorised officer so as to file objections.

11. There is much force in the petitioners' contention. Having considered the report of the Tahsildar, the District Collector should have directed the authority to furnish a copy of the report and given the petitioners an opportunity to file the objection to the report and all the materials contained therein. The contention of the petitioners cannot be rejected as a case of no prejudice. The proceedings are arbitrary and there is a violation inasmuch as the copy of the report of the first respondent has not been furnished.

12. In view of the Full Bench decision reported in 2006 (4) CTC 609 (cited supra) and the fact that copy of the report of the authorised officer was not furnished to the petitioners to make an effective representation itself is good ground to interfere with the Notification issued under section 4(1) of the Act in so far as the petitioners lands are concerned.

13. In view of the facts and circumstances of the case as pleaded by the learned counsel for the petitioners, the petitioners have made out a case of prejudice caused to them by non-furnishing of a copy of the report of the authorised officer. In such view of the matter, the Court is inclined to interfere with the Notification issued under section 4(1) of the Act in so far as the petitioners' lands are concerned. In view of the above said finding, this Court is not inclined to consider the other issues.

14. The learned Government Advocate submits that the report of the Tahsildar will be made available to the petitioners and they can make their objections to the same on merits.

15. In view of the above conclusion, the 4(1) Notification impugned in the writ petition in so far as the petitioners' lands are concerned is set aside and the respondents are directed to furnish copy of the report of the Special Tahslidar, the first respondent to the petitioners and give them sufficient opportunity to submit their objections if any and pass appropriate orders in accordance with law. It is open to the Collector to decide the matter one way or the other after hearing the objections of the petitioners.

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16. The writ petition is ordered on the above terms. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

rj/ts

To

1. The Special Tahsildar
   Harijan Welfare scheme,
   Kallakurichi,
   Villupuram District.

2. The Collector,
   Villupuram District.

1 cc To The Government Pleader, SR.7282.
1 cc To Mr.T.Viswanatha Rao, Advocate, SR.7067.

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